



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 222	Assembly Amendment 1
<i>Memo published:</i> June 22, 2005 <i>Contact:</i> Joyce L. Kiel, Senior Staff Attorney (266-3137)	

2005 Assembly Bill 222 addresses various issues related to environmental claims under general liability insurance policies if bodily injury or property damage arises from the presence of pollutants on the beds or banks of a navigable water in Wisconsin as a result of a release of pollutants in Wisconsin.

The bill does not define “general liability insurance policy” for this purpose. The fiscal estimate submitted by the Office of the Commissioner of Insurance indicates that, while the phrase often refers to commercial general liability policies, the bill could “be interpreted to mean any policy that covers ‘general liability,’ such as a homeowner or farmowner policy.”

Assembly Amendment 1 to the bill specifies that, for the purposes of the bill, “general liability insurance policy” does *not* include any of the following:

1. A homeowners insurance policy.
2. An insurance policy covering a farm owner’s or farm operator’s liability.
3. A claims-made insurance policy.

By way of background, there are two basic types of liability policy forms: claims-made and occurrence. **Claims-made** coverage typically applies only if: (a) the incident, act, or omission took place on or after a specified date (often the policy effective date, but a prior or retrospective date could be specified in the policy); **and** (b) the claim (or, under some policies, some type of notice of demand) is made before a date specified in the policy (such as the date the policy expires, a specific later date, or a specified number of days after the expiration date). In contrast, an **occurrence** policy covers losses from occurrences during the policy period but does not require that the claim be reported before a certain date. For example, in the case of damages which are not known until many years after an event (for example, damage caused by certain types of pollution), a claims-made policy would not provide coverage, whereas an occurrence policy may do so. (Commercial general liability policies typically began

including an absolute pollution exclusion around 1985 or 1986; pollution coverage before then was typically written on an occurrence basis. In contrast, the limited pollution coverage available more recently under limited types of policies typically is written on a claims-made basis.)

Legislative History

Assembly Amendment 1 to the bill was introduced by the Assembly Committee on Insurance. The committee recommended adoption of that amendment on a vote of Ayes, 15; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 9; Noes, 6.

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